

Exhibit 5

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CLERK U.S. BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIABY: ATL DEPUTY

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 Debtors and Debtors in Possession

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

(SAN FERNANDO VALLEY DIVISION)

In re)	CASE NO. SV-01-11329-KL
)	
STAN LEE MEDIA, INC., a)	Chapter 11
Delaware corporation, and)	
STAN LEE MEDIA, INC., a)	(Jointly Administered with Case
Colorado corporation,)	No. SV-01-11331-KL)
)	
Debtors and Debtors)	
in Possession)	NOTICE OF MOTION AND MOTION FOR
)	ORDER TO APPROVE SALE OF ASSETS
)	FREE AND CLEAR OF LIENS;
)	MEMORANDUM OF POINTS AND
<u>x</u> Affects Both Debtors)	AUTHORITIES; DECLARATION OF
)	KENNETH S. WILLIAMS IN SUPPORT
)	THEREOF
<u> </u> Affects Stan Lee)	
Media, Inc., a)	
Delaware corporation,)	Date: January 8, 2002
Only)	Time: 10:00 a.m.
)	Place: Courtroom "301"
<u> </u> Affects Stan Lee)	21041 Burbank Blvd.
Media, Inc., a)	Woodland Hills, CA
Colorado corporation,)	
Only)	

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1 **PLEASE TAKE NOTICE** that a hearing will be held on January 8,
2 2002, at 10:00 a.m., before the Honorable Kathleen T. Lax, United
3 States Bankruptcy Judge for the Central District of California,
4 in her Courtroom "301", located at 21041 Burbank Boulevard,
5 Woodland Hills, California, to consider the motion (the "Motion")
6 filed by Stan Lee Media, Inc., a Delaware corporation, and Stan
7 Lee Media, Inc., a Colorado corporation, debtors and debtors in
8 possession in the above-captioned Chapter 11 cases (the
9 "Debtors"), For Order To Approve Sale Of Assets Free and Clear of
10 Liens.

11
12 Pursuant to 11 U.S.C. § 105(a) and 11 U.S.C. § 363(b), (f)
13 and (m), the Debtors seek to sell certain of the Debtors' assets,
14 as defined in the Asset Purchase Agreement (the "Agreement"), a
15 true and correct copy of which is annexed to the accompanying
16 declaration of Kenneth S. Williams as Exhibit "A", to SLC, LLC
17 ("Purchaser"), free and clear of all liens, claims, encumbrances
18 and interests, and exclusive of any and all debts, obligations,
19 commitments, or responsibilities associated therewith, with any
20 such liens, claims, encumbrances or interests to attach to the
21 proceeds from the sale with the same priority, extent and
22 validity which existed prior to the sale.

23
24 In summary, the Debtors own certain creative projects and
25 developments (the "Creative Assets"). The Creative Assets were
26 created, developed and primarily produced under the direction of
27 pop-culture icon Stan Lee, co-creator of such classic characters
28

1 as Spider-Man™, the Incredible Hulk™ and the X-Men™. Pre-
2 petition, Stan Lee was employed pursuant to an employment
3 agreement with the Debtors, which Stan Lee contends was breached
4 by the Debtors pre-petition. The Debtors dispute this
5 contention.

6
7 Notwithstanding the foregoing, in order to exploit the
8 Creative Assets and generate funds for the estates, it is
9 crucial that Stan Lee be a part of such exploitation. The
10 Debtors believe that the Creative Assets have minimal or no
11 value without Stan Lee's involvement. However, any litigation
12 regarding the validity of Stan Lee's employment agreement is
13 likely to be time consuming, expensive and may result in "bad
14 blood" which will jeopardize future exploitation of the Creative
15 Assets.

16 Pursuant to the Agreement, the parties agreed that the
17 Debtors will sell the Creative Assets to the Purchaser, an entity
18 creatively controlled by Stan Lee. The Purchaser will continue
19 to develop, exploit and monetize the Creative Assets. In
20 consideration for their sale of assets to the Purchaser, the
21 Debtors shall receive a percentage of the gross profit realized
22 by the Purchaser from the exploitation of the developed Creative
23 Assets, which is the best offer received by the Debtors.

24
25 The Agreement is the product of extended arms-length
26 negotiations by and among the Debtors, Purchaser and the Official
27 Committee of Unsecured Creditors. The Debtors believe that the
28

1 Agreement is in the best interest of the estates in that the
2 Agreement will result in creating value out of the Creative
3 Assets, which value, the Debtors believe, can only be created
4 with the direct involvement of Stan Lee.

5 The Motion is based upon this Notice of Motion and Motion,
6 the Memorandum of Points and Authorities, and the Declaration of
7 Kenneth S. Williams annexed hereto, 11 U.S.C. §§ 105, 363 and
8 Federal Rules of Bankruptcy Procedure 2002 and 6004, the
9 statements, arguments and representations of counsel to be made
10 at the hearing on the Motion, and any other evidence properly
11 presented to the Court at or prior to the hearing on the Motion.
12

13 **PLEASE TAKE FURTHER NOTICE** that any opposition to the
14 Motion must, not later than fourteen (14) days before the date
15 of the hearing, be filed with the Clerk of the Bankruptcy Court
16 and served on counsel for the Debtors whose name and address are
17 set forth at the top, left-hand corner of the first page of this
18 Notice of Motion and Motion.

19 **PLEASE TAKE FURTHER NOTICE** that the Court may deem the
20 failure of any party to object to the Motion to constitute
21 consent to the relief sought by the Debtors.
22

23 ///

24 ///

25 ///

26 ///

27 ///

1 **WHEREFORE**, the Debtors respectfully request that the Court
2 (1) grant the Motion; (2) approve the sale upon the terms and
3 conditions set forth in the Agreement annexed hereto; and (3)
4 grant such further and additional relief as the Court deems just
5 and proper.

6
7 Dated: November 27, 2001

STAN LEE MEDIA, INC.,
a Delaware corporation
and

STAN LEE MEDIA, INC.,
a Colorado corporation

8
9
10 By: 
11 _____

MARTIN J. BRILL

CRAIG M. RANKIN

DAVID B. GOLUBCHIK

LEVENE, NEALE, BENDER, RANKIN

& BRILL L.L.P.

12 Attorneys for Chapter 11
13 Debtors and Debtors in
14 Possession
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MEMORANDUM OF POINTS AND AUTHORITIES**I. STATEMENT OF FACTS****A. Background.**

Stan Lee Media, Inc., a Delaware corporation ("Stan Lee Delaware"), and Stan Lee Media, Inc. ("Stan Lee Colorado"), a Colorado corporation, Chapter 11 debtors and debtors in possession (collectively, the "Debtors") commenced these bankruptcy cases by filing Voluntary Petitions under Chapter 11 of the Bankruptcy Code on February 16, 2001 (the "Petition Date"). The Debtors continue to operate their business and manage their financial affairs as debtors in possession pursuant to 11 U.S.C. §§ 1107 and 1108.

Stan Lee Delaware is a wholly-owned subsidiary of Stan Lee Colorado. Stan Lee Colorado is a public corporation that, prior to the Petition Date, traded on NASDAQ under the symbol "SLEE".

The Debtors operated as a digital entertainment studio that, prior to the Petition Date, developed and distributed branded entertainment properties under the direction of pop-culture icon Stan Lee, co-creator of such classic characters as *Spider-Man*TM, the *Incredible Hulk*TM and the *X-Men*TM.

B. Relationship With Stan Lee.

Prior to the Petition Date, Stan Lee was employed by the Debtors pursuant to an employment agreement (the "Stan Lee Employment Agreement"). Prior to the Petition Date, Stan Lee contended that the Debtors were in breach under the Stan Lee

1 Employment Agreement and Stan Lee declared the Stan Lee
 2 Employment Agreement to be terminated as of January 29, 2001,
 3 both of which contentions the Debtors' dispute.

4
 5 Notwithstanding the foregoing, the Debtors believe that any
 6 litigation regarding the validity of Stan Lee's employment
 7 agreement is likely to be time consuming, expensive and may
 8 result in "bad blood" which will jeopardize future exploitation
 9 of the Debtors' Assets, as described below.

10 **C. The Debtors' Creative Assets.**

11 Although the Debtors do own certain minimal office
 12 equipment, by far, the Debtors' most valuable assets include
 13 their branded entertainment properties (the "Creative Assets")
 14 which were created and developed under Stan Lee. The Creative
 15 Assets¹, as described in the annexed Asset Purchase Agreement,
 16 and in greater detail in exhibits thereto, include the following:

17 1. Produced Properties:

- 18 a) Stanlee.NET web site and portal;
 19 b) The Accuser;
 20 c) The Drifter; and
 d) Stan's Evil Clone.

21 2. Co-Brands Produced:

- 22 a) The Backstreet Project.

23 3. Co-Brands In Development:

- 24 a) Gene Roddenberry's Starship;
 25 b) Mary J. Blige;
 26 c) X-Treme Heroes;
 d) Police Force 2220;
 27 e) Chrysallis;
 f) The Stone Giant;
 g) Battle School Tranquility;

28 ¹ The Creative Assets which are the subject of this Motion exclude the 7th
 Portal Project, which is the subject of a dispute with Salim/Stagg.

- h) Story Bible; and
- i) Stan Junior.

4. Developed Deals:

- a) 50% interest in Lee Schultz Partnership.

5. Other Projects (Undeveloped; Debtors acting as agent for assets only):

- a) DC Comics;
- b) Toon Boom;
- c) Cyberworld;
- d) Mobius;
- e) Hollywood Christmas Parade;
- f) Scuzzle; and
- g) Scuzzle Design.

6. All trademarks, copyrights, original artwork and promotional material relating to the foregoing Creative Assets.

D. Marketing of the Creative Assets.

Due to lack of financing, pre-petition the Debtors laid off most of their employees and generally ceased ongoing operations. The Debtors filed the instant cases in order to find a strategic partner or a purchaser for their assets in order to maximize the recovery for the estates.

At the outset of these cases, the Debtors created a sales memorandum (the "Marketing Package"), which included a detailed listing of the Debtors' assets, primarily consisting of the Creative Assets. The Marketing Package contained a detailed explanation of each of the assets, together with a listing of deals entered into by the Debtors relating to such assets. The comprehensive Marketing Package, the relevant excerpts of which are attached to the annexed Agreement, allowed prospective

1 purchasers and interested parties to analyze the Debtors' assets
2 and make an informed decision whether to purchase or infuse
3 capital with respect to such assets.

4 Upon finalizing the Marketing Package, the Debtors sent the
5 Marketing Package to over 40 financial and entertainment entities
6 which may have had an interest in the Debtors' business. The
7 Debtors' marketing efforts, which included a request for interim
8 post-petition financing, resulted in approximately 12 meetings
9 and conferences with interested parties, including Interfase
10 Capital, L.P. ("Interfase").

12 As set forth above, in order for the Debtors to be able to
13 market the Debtors' assets and negotiate with third parties as a
14 "going concern" entity, the Debtors required financing. The
15 Debtors were able to negotiate the terms of a post-petition
16 debtor-in-possession financing facility pursuant to which the
17 Debtors would commence limited operations pending a sale or
18 restructuring of the Debtors' business. On May 3, 2001, this
19 Court entered that certain "Final Order Approving Emergency
20 Motion Pursuant To Local Bankruptcy Rule 9075-1(1) For Authority
21 To Obtain Post-Petition Financing" (the "Order"), pursuant to
22 which the Court approved the Debtor-in-Possession financing
23 agreement (the "Financing Agreement") entered into by the Debtors
24 and Interfase. Pursuant to the Financing Agreement, Interfase
25 committed to provide at least \$250,000 in post-petition financing
26 for the Debtors' operations, and potentially, \$250,000 more in
27
28

1 the future. In turn, Interfase was granted a security interest
2 in substantially all of the Debtors' pre-petition and post-
3 petition assets. Additionally, based on Interfase's
4 representations that it was interested in either acquiring or
5 merging with the Debtors, Interfase was granted a 60-day
6 exclusive right to negotiate with the Debtors.
7

8 Unfortunately, the discussions between the Debtors and
9 Interfase did not proceed as hoped by the Debtors. No agreement
10 was reached between the Debtors and Interfase regarding a
11 recapitalization of the Debtors or a sale of the Debtors' assets
12 to Interfase. Moreover, Interfase refused to provide the
13 additional \$250,000 in financing to the Debtors, which
14 essentially shut down the Debtors' operations again.

15 Upon being released of the exclusivity requirement to
16 negotiate with Interfase, the Debtors attempted to market their
17 projects to other interested entities, which included companies
18 in the United States and in Canada. However, as a result of
19 Interfase's exclusivity period, other potential deals "fell
20 apart" and could not be revived by the Debtors. Additionally,
21 through discussions with such third parties, it was clear that
22 (1) no party would recapitalize the Debtors through a plan of
23 reorganization due primarily to the fact that the Debtors' public
24 shares (SLEE) have been damaged by the bad press and federal
25 indictments relating to the Debtors' former management and
26
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1 shareholder lawsuits; and (2) any sale transaction must involve
2 Stan Lee, personally, and his creative abilities.

3 As discussed above, Stan Lee contended that his employment
4 agreement with the Debtors was breached and terminated pre-
5 petition and, therefore, unassignable. While the Debtors
6 disputed Mr. Lee's contentions, the fact is that any litigation
7 would take a long time, be expensive, and result in "bad blood,"
8 which would be detrimental to any possibility of having Stan Lee
9 exploit the Debtors' assets. Additionally, it is likely that
10 Stan Lee's personal services employment agreement is not one
11 which can be assumed and assigned over Mr. Lee's objection, as
12 provided for in 11 U.S.C. § 365(c).
13

14 Based on the foregoing, the Debtors involved Stan Lee,
15 through his independent counsel, in their negotiations. Stan Lee
16 cooperated with the Debtors' efforts and assisted the Debtors in
17 their marketing efforts to the best of his ability.
18 Unfortunately, the Debtors were unable to reach any agreements
19 with third parties which would be acceptable to everyone and
20 which had a chance of benefiting the estates.

21 After it was clear that the Debtors would not be able to
22 consummate a transaction with third parties and that the Debtors
23 had no ability to monetize their productions, Stan Lee contacted
24 the Debtors to advise them that Stan Lee would be interested in
25 trying to exploit and monetize the Debtors' assets. In that
26 regard, Stan Lee made an offer to the Debtors to acquire the
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28

1 Creative Assets and exploit them, with the estates sharing in
2 future revenues. Based on the Debtors' unsuccessful marketing
3 efforts and the importance of Stan Lee's personal involvement in
4 the productions, it was evident that the highest and best use for
5 the estates' assets would be through the exploitation of such
6 assets by Stan Lee. Accordingly, the Debtors engaged in
7 negotiations with Stan Lee, who was represented by independent
8 counsel, regarding the development and exploitation of the
9 Creative Assets. The Creditors' Committee was also involved in
10 such negotiations and assisted the Debtors in obtaining a result
11 which is much more favorable for the estate than originally
12 proposed by Stan Lee.
13

14
15 **E. The Asset Purchase Agreement**

16 Based upon extensive negotiations among the Debtors, the
17 Committee and Stan Lee, which spanned approximately two (2)
18 months, the parties reached an agreement, the salient terms of
19 which the Debtors understand are acceptable to the Committee.
20 The agreement of the parties is memorialized in that certain
21 Asset Purchase Agreement (the "Agreement"), a true and correct
22 copy of which is attached to the annexed Declaration of Kenneth
23 S. Williams as Exhibit "A". In summary, the Agreement provides
24 as follows:
25
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28

1 1. The Debtors shall transfer the Creative Assets,
2 excluding the 7th Portal project, to SLC, LLC (the "Purchaser"),
3 an entity controlled by Stan Lee.

4 2. The Purchaser shall use its best efforts to exploit the
5 Creative Assets.

6 3. The sale shall specifically exclude the following:

- 7 a. All cash, bank deposits and/or cash equivalents of
8 the Debtors.
9 b. All of the Debtors' office equipment, computers,
10 and servers.
11 c. Claims, lawsuits and causes of action of the
12 Debtors.
13 d. Tax refunds and tax attributes.
14 e. Claims for relief under any of the avoiding powers
15 provided for under Chapter 5 of the Bankruptcy
16 Code.
17 f. All books and records of the Debtors that do not
18 relate to the Assets.
19 g. The Debtors' corporate charter or qualifications
20 to conduct business as a corporation, arrangements
21 with registered agents relating to foreign
22 qualifications, taxpayer and other identification
23 numbers, seals, minute books, transfer books, and
24 other documents relating to the organization,
25 maintenance, and existence of the Debtors as a
26 corporation; or any of the rights of the Debtors
27 under this Agreement.
28 h. The Debtors' interest in Conan Properties, Inc.
 and any rights or interests, including
 intellectual property rights, and interests in any
 of the properties and assets of CPI.

 4. In consideration for the sale of the Creative Assets,
the following revenue-sharing program shall be implemented by the
parties:

- a. Until such time as the allowed secured claim of
Interfase is satisfied in full by the Debtors or
their estates (the "First Target"), the Purchaser
shall pay to the Debtors, or their estates, for

1 payment to Interfase, 60% of the gross income
2 received by the Purchaser from the exploitation of
3 the Primary Assets, which are set forth in
Sections 1.1.1, 1.1.2, and 1.1.4 of the Agreement.

4 b. Upon successfully achieving the First Target and
5 until such time as the Debtors or their estates
6 recover \$250,000 from the Purchaser's exploitation
7 of the Primary Assets (the "Second Target"), the
8 Purchaser shall pay to the Debtors, or their
9 estates, 40% of the gross income received by the
10 Purchaser from the exploitation of the Primary
11 Assets.

12 c. Upon successfully achieving the Second Target and
13 until such time as the Purchaser recovers its
14 advance (as described in Paragraph 4(a) above),
15 wherein Purchaser consented to increase the
16 Debtors' share of the exploitation of the Primary
17 Assets from 40% to 60% of gross income received by
18 Purchaser until such time as Interfase's security
19 interest is satisfied in full (the "Third
20 Target"), the Purchaser shall pay to the Debtors,
21 or their estates, 20% of the gross income received
22 by the Purchaser from the exploitation of the
23 Primary Assets.

24 d. Upon successfully achieving the Third Target and
25 until such time as (a) all allowed claims
26 (excluding any equity interests in the Debtors)
27 are satisfied in full, net of other recoveries;
28 and (b) the Debtors' estates receive the sum of
one (1) million dollars from the exploitation of
the Assets over and above the amount necessary to
satisfy all allowed claims, the Purchaser shall
pay to the Debtors, or their estates, 40% of the
gross income received by the Purchaser from the
exploitation of the Primary Assets.

e. In consideration for the purchase of the assets
described in Sections 1.1.3 and 1.1.5 of the
Agreement (the "Agency Assets"), the Purchaser
shall pay to the Debtors, or their estates, 12% of
the gross income received by the Purchaser from
the exploitation of the Agency Assets.

5. In addition to the foregoing, Stan Lee demanded, and
the estates consented, to transfer the following intellectual

1 property assets to Stan Lee, personally, without any obligation
2 of Stan Lee to compensate the Debtors or their estates for such
3 assets (the "Free Assets"):

- 4 a. Stan Lee Presents;
5 b. Stan's Soapbox; and
6 c. Stan Lee & Design.

7
8 **F. The Sale is in the Best Interest of the Estates.**

9 As discussed in detail above, the Debtors believe that
10 without the active involvement of Stan Lee, the Debtors will not
11 be able to exploit the value of the Creative Assets. In fact,
12 currently, without the involvement of Stan Lee, the Debtors
13 believe that the Creative Assets have virtually no value.

14 On the other hand, the Agreement allows Stan Lee to exploit
15 the Creative Assets, while allowing the Debtors' estates to share
16 in the revenue stream from such exploitation. Attached hereto as
17 Exhibit "B" are projections of the revenue stream relating to the
18 exploitation of the Creative Assets (the "Projections"). The
19 Projections are based on a 3-5 year character life and utilize a
20 conservative royalty rate of 5%.

21 The success of characters similar to the Assets depends upon
22 the characters achieving a television or movie contract, which is
23 similar to an anchor tenant in a strip mall. Once a movie or
24 television contract is achieved, the characters can also be
25 monetized through merchandise, apparel, comic books and book
26 contracts.
27
28

1 Although Stan Lee's characters have generally had a high
2 degree of success, the fact is that it is unknown which
3 characters will succeed and which will not. The general industry
4 standard is to develop a multitude of characters and "bet" on a
5 few characters succeeding.

6 Based on the foregoing industry standards and assumptions,
7 the Debtors estimate that the Assets can generate between \$4-\$7
8 million over the next five years.

10
11 **G. Projected Distribution Based on \$4 Million Total Return.**

12 Utilizing the lower-end of the projections (\$4 million), and
13 based on Interfase's claim of \$250,000, the revenues would be
14 shared as follows:

15 First \$416,666.67 - Of the foregoing revenues, the Debtors'
16 share would be \$250,000, to pay Interfase, and the
17 Purchaser's share would be \$166,666.67.

18 Next \$625,000 (total revenues to date of \$1,041,666.67) - Of
19 the next \$625,000, the Debtors' share would be \$250,000 and
20 the Purchaser's share would be \$375,000.

21 Next \$416,666.67 (total revenues to date of \$1,458,333.34) -
22 Of the next \$416,666.67, the Debtors' share would be
23 \$83,333.34 and the Purchaser's share would be \$333,333.33.

24 Next \$2,541,666.66 (total revenues to date of \$4 million) -
25 Of the next \$2,541,666.66, the Debtors' share would be
26 \$1,016,666.66 and the Purchaser's share would be \$1,525,000.
27
28

1 Therefore, in the event that the exploitation of the Assets
2 results in gross income of \$4 million, the Debtors' estates will
3 generate, after payment of Interfase's secured claim, the sum of
4 \$1,683,333.00.
5

6
7 **H. Projected Distribution Based on \$7 Million Total Return.**

8 In the event that the Purchaser "hits a jackpot" with the
9 exploitation of the Assets Utilizing the higher-end of the
10 projections (\$7 million), and based on Interfase's claim of
11 \$250,000, the revenues would be shared as follows:

12 First \$416,666.67 - Of the foregoing revenues, the Debtors'
13 share would be \$250,000, to pay Interfase, and the
14 Purchaser's share would be \$166,666.67.

15 Next \$625,000 (total revenues to date of \$1,041,666.67) - Of
16 the next \$625,000, the Debtors' share would be \$250,000 and
17 the Purchaser's share would be \$375,000.

18 Next \$416,666.67 (total revenues to date of \$1,458,333.34) -
19 Of the next \$416,666.67, the Debtors' share would be
20 \$83,333.34 and the Purchaser's share would be \$333,333.33.

21 Next \$5,541,666.66 (total revenues to date of \$7 million) -
22 Of the next \$5,541,666.66, the Debtors' share would be
23 \$2,216,666 and the Purchaser's share would be \$3,325,000.
24

25 Therefore, in the event that the exploitation of the Assets
26 results in gross income of \$7 million, the Debtors' estates will
27
28

1 generate, after payment of Interfase's secured claim, the sum of
2 \$2,799,999.34.
3

4 II. DISCUSSION

5 A. The Court Should Approve the Debtors' Proposed Asset Sale to
6 Purchaser Pursuant to Section 363(b) of the Bankruptcy Code.

7 Section 363(b)(1) of the Bankruptcy Code provides:

8 "The trustee, after notice and a hearing, may
9 use, sell, or lease, other than in the
10 ordinary course of business, property of the
11 estate."
12

13 11 U.S.C. § 363(b)(1). As a general matter, "a judge determining
14 a Section 363(b) application [should] find from the evidence
15 presented before him at the hearing a good business reason to
16 grant such an application." In re Lionel Corp., 722 F.2d 1063,
17 1071 (2d Cir. 1983). The party moving under Section 363(b)
18 carries the burden of demonstrating that a use, sale or lease out
19 of the ordinary course of business will aid the debtor's
20 reorganization. Id

21 Certain factors pertinent to this analysis have been
22 articulated; specifically, the Court should consider whether:

- 23 (1) a sound business purpose justifies the
24 sale;
25 (2) accurate and reasonable notice of the
26 sale was provided;
27
28

- (3) the price to be paid is adequate, i.e.,
 fair and reasonable; and
- (4) the sale is in good faith, i.e., there
 is an absence of any lucrative deals
 with insiders.

In re Industrial Valley Refrig. and Air Cond. Supplies, Inc., 77
 B.R. 15, 21 (Bankr. E.D. Pa. 1987); In re Wilde Horse
 Enterprises, Inc., 136 B.R. 830, 841-2 (Bankr. C.D. Cal. 1991);
In re The Landing, 156 B.R. 246, 249 (Bankr. E.D. Mo. 1993); In
 re George Walsh Chevrolet, Inc., 118 B.R. 99, 102 (Bankr. E.D.
 Mo. 1990); In re WBQ Partnership, 189 B.R. 97, 102 (Bankr.
 E.D.Va. 1995); In re Lady H. Coal Co., Inc., 193 B.R. 233 (Bankr.
 S.D.W.Va. 1996).

The Debtors' proposed sale to Purchaser meets the foregoing
 criteria, is appropriate and should be approved by the Court.

1. Sound Business Purpose

There must be some articulated business justification, other
 than appeasement of major creditors, for using, selling or
 leasing property out of the ordinary course of business before
 the bankruptcy judge may order such disposition under Section
 363(b). In re Lionel Corp., supra, 722 F.2d at 1070. The Ninth
 Circuit Bankruptcy Appellate Panel in Walter v. Sunwest Bank (In
 re Walter), 83 B.R. 14, 19 (9th Cir. B.A.P. 1988) has adopted a
 flexible case-by-case test to determine whether the business
 purpose for a proposed sale justifies disposition of property of

1 the estate under Section 363(b). In Walter, the Bankruptcy
2 Appellate Panel, adopting the reasoning of the Fifth Circuit in
3 In re Continental Airlines, Inc., 780 F.2d 1223 (5th Cir. 1986)
4 and the Second Circuit in In re Lionel Corp., supra, articulated
5 the standard to be applied under Section 363(b) as follows:
6

7 "Whether the proffered business justification
8 is sufficient depends on the case. As the
9 Second Circuit held in Lionel, the bankruptcy
10 judge should consider all salient factors
11 pertaining to the proceeding and,
12 accordingly, act to further the diverse
13 interests of the Debtor, creditors and equity
14 holders, alike. He might, for example, look
15 to such relevant facts as the proportionate
16 value of the asset to the estate as a whole,
17 the amount of elapsed time since the filing,
18 the likelihood that a plan of reorganization
19 will be proposed and confirmed in the near
future, the effect of the proposed
disposition on future plans of
reorganization, the proceeds to be obtained
from the disposition vis-a-vis any appraisals
of the property, which of the alternatives of
use, sale or lease the proposal envisions
and, most importantly perhaps, whether the
asset is increasing or decreasing in value.
This list is not intended to be exclusive,
but merely to provide guidance to the
bankruptcy judge."

20 In Re Walter, supra, 83 B.R. at 19-20, citing In re Continental
21 Air Lines, Inc., 780 F.2d 1223, 1226 (5th Cir. 1986).

22 The facts pertaining to the Debtors' proposed sale to
23 Purchasers amply substantiate the Debtors' business decision that
24 their contemplated asset sale to Purchaser in accordance with the
25 terms of the Agreement is in the best interests of the Debtors'
26 estates and their creditors and merits the approval of this
27 Court.
28

1 From the date of the filing of the Debtors' bankruptcy
2 cases, the Debtors marketed their assets to third parties in
3 order to obtain a capital infusion into the Debtors' operations
4 or effectuate a sale of the Debtors' assets. From the outset of
5 the Debtors' marketing efforts, it was abundantly clear that
6 without the active involvement of Stan Lee, the Debtors will not
7 be able to exploit the value of the Creative Assets or generate a
8 return. Based on conversations with such parties, it was also
9 clear that such entities did not care as much about the Creative
10 Assets as they cared about bringing Stan Lee on board. However,
11 due to the alleged breach of Stan Lee's employment agreement and
12 the fact that it is unlikely that a personal services contract
13 can be assumed and assigned over Stan Lee's objection, the
14 negotiation process was very difficult for the Debtors.
15 Eventually, the Debtors were able to reach an agreement with Stan
16 Lee with respect to the Creative Assets, which agreement the
17 Debtors believe is acceptable to the Committee, pursuant to which
18 the estates will share in a percentage of the gross income
19 derived by the Purchaser from the exploitation of the Creative
20 Assets.
21

22 Based on the foregoing, the Debtors were able to monetize
23 the value of the Creative Assets for the benefit of the estates.
24 The foregoing demonstrates that the Debtors' proposed sale to
25 Purchaser in accordance with the terms of the Agreement is
26 justified by sound business purposes, satisfying the first
27
28

1 requirement for a sale under Section 363(b) of the Bankruptcy
2 Code.

3 **2. Accurate and Reasonable Notice**

4 A notice is sufficient if it includes the terms and
5 conditions of the sale and if it states the time for filing
6 objections. In re Karpe, 84 B.R. 926, 930 (Bankr. M.D.Pa. 1988).
7 The purpose of the notice is to provide an opportunity for
8 objections and hearing before the court if there are objections.
9 Id.

10 The Debtors have provided a notice of their proposed sale to
11 all creditors and parties in interest. Additionally, the Debtors
12 served a copy of this Motion, together with all attached
13 exhibits, upon Interfase, the secured creditor herein, the
14 Official Committee of Unsecured Creditors, the Office of the
15 United States Trustee, and all parties who served the Debtors
16 with a request for special notice. Additionally, if any party
17 requests a copy of the Motion, the Debtors will forward a copy of
18 the Motion promptly upon receipt of such a request.
19

20 The Debtors submit that their proposed notice is reasonable
21 and appropriate under the circumstances.

22 **3. Fair and Reasonable Price**

23 In order to be approved under Section 363(b) of the
24 Bankruptcy Code, the purchase price must be fair and reasonable.
25 Coastal Indus., Inc. v. U.S. Internal Revenue Service (In re
26 Coastal Indus., Inc.), 63 B.R. 361, 368 (Bankr. N.D. Ohio 1986).
27 Several courts have held that "fair value" is given for property
28

1 in a bankruptcy sale when at least 75% of the appraised value of
2 such property is paid. See In re Karpe, supra, 84 B.R. at 933;
3 In re Abbotts Dairies of Pennsylvania, Inc., 788 F.2d 143, 149
4 (3d Cir. 1986); Willemain v. Kivitz, 764 F.2d 1019 (4th Cir.
5 1985); In re Snyder, 74 B.R. 872, 878 (Bankr. E.D. Pa. 1987); In
6 re The Seychelles, Partnership and Genius Corp. v. Banyan Corp.,
7 32 B.R. 708 (N.D. Tex. 1983). However, the Debtors also realize
8 that their "main responsibility, and the primary concern of the
9 bankruptcy court, is the maximization of the value of the asset
10 sold." In re Integrated Resources, Inc., 135 B.R. 746, 750
11 (Bankr. S.D.N.Y. 1992), *aff'd*, 147 B.R. 650 (S.D.N.Y. 1992). "It
12 is a well-established principle of bankruptcy law that the
13 objective of bankruptcy sales and the [debtor's] duty with
14 respect to such sales is to obtain the highest price or greatest
15 overall benefit possible for the estate." In re Atlanta
16 Packaging Products, Inc., 99 B.R. 124, 131 (Bankr. N.D. Ga.
17 1988); see also In re Wilde Horse Enterprises, supra, 136 B.R. at
18 841 ["in any sale of estate assets, the ultimate purpose is to
19 obtain the highest price for the property sold"].
20

21 The Debtors believe that the terms of the Agreement (i.e.,
22 sharing in the future revenue stream of the exploitation of the
23 Creative Assets) constitutes a fair and reasonable purchase price
24 for the assets under the current circumstances for the following
25 reasons:
26
27
28

1 1. The Debtors have been marketing the Creative Assets
2 from the commencement of their cases. Although negotiations with
3 different parties took place, after months of marketing, only one
4 real offer was presented to the Debtors. The offer was presented
5 by the Purchaser. Even after the offer was presented by the
6 Purchaser, the Debtors and the Committee spent months negotiating
7 the terms of the sale, which terms have now been approved and
8 finalized in the attached Agreement.
9

10 2. From the outset of the Debtors' marketing efforts, it
11 was clear that the only way to maximize the value of the Creative
12 Assets was to have a package deal with Stan Lee. Pursuant to the
13 Agreement, Stan Lee will be the person that is primarily
14 responsible for exploiting the assets. As a result, the Debtors
15 were able to overcome the primary obstacle to maximizing the
16 value of the Creative Assets.

17 3. Based on the revenue-sharing arrangement set forth in
18 the Agreement, the interests of the Debtors are aligned with
19 those of the Purchaser. In other words, if the revenue stream is
20 maximized, everyone benefits.

21 4. Finally, as discussed above, the exploitation of the
22 assets is likely to result in a net distribution to the Debtors
23 estates, after payment of Interfase's secured claim, of
24 approximately \$1.68-\$2.8 million.
25

26 Moreover, the terms of the Agreement were arrived at
27 following arms-length negotiations between the parties, including
28

1 the active involvement of the Committee, and represents the best,
2 and only, offer received by the Debtors. For all of the reasons
3 described above, consummating the proposed asset sale to
4 Purchaser in accordance with the terms of the Agreement is
5 clearly the best option available for the Debtors' estates and
6 their creditors.
7

8 4. Good Faith

9 When a bankruptcy court authorizes a sale of assets pursuant
10 to Section 363(b)(1), it is required to make a finding with
11 respect to the "good faith" of the purchaser. In re Abbotts
12 Dairies, supra, 788 F.2d at 149. Such a procedure ensures that
13 Section 363(b)(1) will not be employed to circumvent the creditor
14 protections of Chapter 11, and as such, it mirrors the
15 requirement of Section 1129, that the Bankruptcy Court
16 independently scrutinizes the debtor's reorganization plan and
17 makes a finding that it has been proposed in good faith. Id. at
18 150.

19 "Good faith" encompasses fair value, and further speaks to
20 the integrity of the transaction. In re Wilde Horse Enterprises,
21 supra, 136 B.R. at 842. With respect to the Debtor's conduct in
22 conjunction with the Sale, the good faith requirement "focuses
23 principally on the element of special treatment of the Debtor's
24 insiders in the sale transaction." See In re Industrial Valley
25 Refrig. and Air Cond. Supplies, Inc., supra, 77 B.R. 15, 17.
26 With respect to Purchaser's conduct, this Court should consider
27
28

1 whether there is any evidence of "fraud, collusion between the
2 purchaser and other bidders or the [debtor], or an attempt to
3 take grossly unfair advantage of other bidders." In re Abbotts
4 Dairies, supra, 788 F.2d at 147, In re Rock Indus. Mach. Corp.,
5 572 F.2d 1195, 1198 (7th Cir. 1978); In re Wilde Horse
6 Enterprises, Inc., supra, 136 B.R. at 842; In re Alpha
7 Industries, Inc., 84 B.R. 703, 706 (Bankr. D. Mont. 1988). In
8 short, "[l]ack of good faith is generally determined by
9 fraudulent conduct during the sale proceedings." In re Apex Oil
10 Co., 92 B.R. 847, 869 (Bankr. E.D.Mo. 1988), *citing* In re
11 Exennium, Inc., 715 F.2d 1401, 1404-05 (9th Cir. 1983).

13 The terms of the proposed sale of the Debtors' assets to
14 Purchaser were negotiated in good faith in arm's-length process.
15 Although the Purchaser is an "insider" of the Debtors due to Stan
16 Lee's involvement, the Purchaser was represented by independent
17 counsel at all stages of negotiations. Additionally, due to the
18 existing relationship between the Debtors and Stan Lee, the
19 Debtors sought and obtained the involvement of the Committee, as
20 the entity representing and protecting the interests of the
21 creditor base. The proposed sale confers no special or
22 undisclosed benefit upon any insider of the Debtors, other than
23 Stan Lee's income from the continued exploitation of the Creative
24 Assets by Stan Lee through the Purchaser. There is no
25 distribution of any kind whatsoever to any equity holder, officer
26 or director of the Debtors which is made part of the proposed
27
28

1 sale to Purchaser. No insider of the Debtors will receive any
2 special treatment in connection with the proposed sale. Finally,
3 there is no fraud involving Purchaser or the Debtors and no
4 collusion between Purchaser and any other Purchasers or the
5 Debtors.

6
7 Based on these facts, the Debtors submit that the Court
8 should find that the Purchaser is a good faith purchaser entitled
9 to the protections afforded by Section 363(m) of the Bankruptcy
10 Code.

11 **B. Section 363(f) of the Bankruptcy Code Permits the Debtors'**
12 **Sale of Their Assets to Purchaser to Be Free and Clear of**
13 **All Interests.**

14 Section 363(f) of the Bankruptcy Code provides, in relevant
15 part, as follows:

16 "The trustee may sell property under
17 subsection (b) . . . of this section free and
18 clear of any interest in such property of an
19 entity other than the estate, only if--

20 (1) applicable non-bankruptcy law permits
21 the sale of such property free and clear of
22 such interest; ...

23 (2) such entity consents;

24 (3) such interest is a lien and the price at
25 which such property is to be sold is greater
26 than the aggregate value of all liens on such
27 property;

(4) Such interest is in bona fide dispute;

or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest."

11 U.S.C. §363(f). Section 363(f) of the Bankruptcy Code was drafted in the disjunctive. Thus, a debtor need only meet the provisions of one of the five subsections of Section 363(f) in order for a sale of property free and clear of interests to be permissible.

1. The Proposed Asset Sale is Permissible Pursuant to 11 U.S.C. Section 363(f) (2).

The only secured creditor in these cases is Interfase which provided post-petition financing (\$250,000) to the Debtors and which received a blanket security interest upon all of the Debtors' assets, including the assets subject to this Motion. The Agreement acknowledges the existence of the Interfase secured claim and provides for the payment of such secured claim before any distribution is made to the estates. The Debtors believe that Interfase will consent to the proposed sale on the condition that its liens attach to the proceeds derived from such assets. The Debtors consent to providing for Interfase's liens to attach to the estates' proceeds in respect to the Agreement.

2. The Proposed Asset Sale is Permissible Pursuant to 11 U.S.C. Section 363(f) (3).

Section 363(f) (3) allows a sale to take place free and clear of liens if the sale price "is greater than the aggregate value

1 of all liens on such property." Interfase is the only creditor
2 that holds a security interest in the Creative Assets. As
3 Collier on Bankruptcy states, "[c]onstruction of the phrase 'the
4 aggregate value of all liens has sharply divided the courts. One
5 line of authority holds that the "aggregate value of all liens"
6 means the actual economic value of the liens or the value of the
7 lien as determined under Section 506(a). 3 Collier on Bankruptcy
8 § 363.06[4], at pp. 363-46; (15th ed. Rev. 2001); See In re
9 Oneida Lake Development, Inc., 114 B.R. 352 (Bankr. N.D.N.Y.
10 1990); In re Terrace Gardens Park Partnership, 96 B.R. 707
11 (Bankr. W.D.Tex. 1989).

12
13 As discussed above, currently, without the involvement of
14 Stan Lee, the Debtors believe that the Creative Assets have
15 virtually no value. Pursuant to Section 506(a), Interfase's
16 security interest in the Creative Assets is equal to the value of
17 such assets, which is virtually nothing at the present. Under
18 the proposed sale, the value of such Creative Assets will surely
19 exceed the current value, as set forth in the Projections
20 attached hereto as Exhibit "B". In fact, the proposed sale is
21 the only way to monetize the Creative Assets. As a result, the
22 sale price does exceed the aggregate value of the liens secured
23 by such property. Moreover, based on the Projections, the sale
24 price exceeds the face amount of Interfase's lien. Interfase's
25 liens will continue to attach to the estates' proceeds resulting
26 from the Agreement.
27
28

III. CONCLUSION

For all of the foregoing reasons, the Debtors respectfully request that the Court (1) grant the Motion; (2) approve the sale upon the terms and conditions set forth in the Agreement; and (3) grant such further and additional relief as the Court deems just and proper.

Dated: November 27, 2001

STAN LEE MEDIA, INC.,
a Delaware corporation
and

STAN LEE MEDIA, INC.,
a Colorado corporation

By: 

MARTIN J. BRILL

CRAIG M. RANKIN

DAVID B. GOLUBCHIK

LEVENE, NEALE, BENDER, RANKIN

& BRILL L.L.P.

Attorneys for Chapter 11 Debtors
and Debtors in Possession

DECLARATION OF KENNETH S. WILLIAMS

I, Kenneth S. Williams, do hereby declare as follows:

1. I am the Chief Executive Officer of Stan Lee Media, Inc., a Delaware corporation ("Stan Lee Delaware"), and Stan Lee Media, Inc., a Colorado corporation ("Stan Lee Colorado"), Chapter 11 debtors and debtors in possession (collectively, the "Debtors").

2. I have personal knowledge of the facts set forth herein, and, if called as a witness, I could and would testify competently with respect thereto.

A. Background.

3. The Debtors commenced these bankruptcy cases by filing Voluntary Petitions under Chapter 11 of the Bankruptcy Code on February 16, 2001 (the "Petition Date"). The Debtors continue to operate their business and manage their financial affairs as debtors in possession pursuant to 11 U.S.C. §§ 1107 and 1108.

4. Stan Lee Delaware is a wholly-owned subsidiary of Stan Lee Colorado. Stan Lee Colorado is a public corporation that, prior to the Petition Date, traded on NASDAQ under the symbol "SLEE".

5. The Debtors operated as a digital entertainment studio that, prior to the Petition Date, developed and distributed branded entertainment properties under the direction of pop-culture icon Stan Lee, co-creator of such classic characters as Spider-Man™, the Incredible Hulk™ and the X-Men™.

1 **B. Relationship With Stan Lee.**

2 6. Prior to the Petition Date, Stan Lee was employed by the
3 Debtors pursuant to an employment agreement (the "Stan Lee
4 Employment Agreement"). Prior to the Petition Date, Stan Lee
5 contended that the Debtors were in breach under the Stan Lee
6 Employment Agreement and Stan Lee declared the Stan Lee
7 Employment Agreement to be terminated as of January 29, 2001,
8 both of which contentions the Debtors' dispute.
9

10 7. Notwithstanding the foregoing, I believe that any
11 litigation regarding the validity of Stan Lee's employment
12 agreement is likely to be time consuming, expensive and may
13 result in "bad blood" which will jeopardize future exploitation
14 of the Debtors' assets.

15 **C. The Debtors' Creative Assets.**

16 8. Although the Debtors do own certain minimal office
17 equipment, by far, the Debtors' most valuable assets include
18 their branded entertainment properties (the "Creative Assets")
19 which were created and developed under Stan Lee. The Creative
20 Assets² are described in that certain Asset Purchase Agreement, a
21 true and correct copy of which is attached hereto as Exhibit "A".
22

23 **D. Marketing of the Creative Assets.**

24 9. Due to lack of financing, pre-petition the Debtors'
25 management laid off most of the Debtors' employees and generally
26 ceased ongoing operations. The Debtors filed the instant cases
27

28 ² The Creative Assets which are the subject of this Motion exclude the 7th
Portal Project, which is the subject of a dispute with Salim/Stagg.

1 in order to find a strategic partner or a purchaser for their
2 assets in order to maximize the recovery for the estates.

3 10. At the outset of these cases, the Debtors' management
4 and creative talent created a sales memorandum (the "Marketing
5 Package"), which included a detailed listing of the Debtors'
6 assets, primarily consisting of the Creative Assets. The
7 Marketing Package contained a detailed explanation of each of the
8 assets, together with a listing of deals entered into by the
9 Debtors relating to such assets. The comprehensive Marketing
10 Package, the relevant excerpts of which are attached to the
11 annexed Agreement, allowed prospective purchasers and interested
12 parties to analyze the Debtors' assets and make an informed
13 decision whether to purchase or infuse capital with respect to
14 such assets.
15

16 11. Upon finalizing the Marketing Package, the Debtors sent
17 the Marketing Package to over 40 financial and entertainment
18 entities which may have had an interest in the Debtors' business.
19 The Debtors' marketing efforts, which included a request for
20 interim post-petition financing, resulted in approximately 12
21 meetings and conferences with interested parties, including
22 Interfase Capital, L.P. ("Interfase").
23

24 12. As set forth above, in order for the Debtors to be able
25 to market the Debtors' assets and negotiate with third parties as
26 a "going concern" entity, the Debtors required financing. The
27 Debtors were able to negotiate the terms of a post-petition
28